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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,489	03/01/2002	Alan E. Shluzas	A31-6015	3030

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EXAMINER

RAMANA, ANURADHA

ART UNIT PAPER NUMBER

3732

DATE MAILED: 10/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,489

Applicant(s)

SHLUZAS, ALAN E.

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 16-30 is/are allowed.
- 6) ☒ Claim(s) 1 and 8-15 is/are rejected.
- 7) ☐ Claim(s) 3,6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 8-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Horvath et al. (US 6,440,137).

Horvath et al. disclose a fastening apparatus with a longitudinal member 40; a fastener 110 engageable with a bone portion and connecting the longitudinal member to the bone portion with a first part spherical surface 116 engageable with housing 10 and a second part spherical surface 112 engageable with a washer or spacer 120, the housing 10 having a first passage 30 through which the longitudinal member 40 extends and a second passage extending transverse to the first passage through which the fastener 110 extends being positionable in any one of a plurality of angular positions relative to the longitudinal axis of the second passage, and the spacer 120 being positioned in the second passage of housing 10; an upset or "member" 12 fixedly connected to housing 10 and extending into engagement with grooves 122 of spacer 120 to maintain the spacer in frictional engagement with fastener 110 to prevent relative movement between fastener 110 and housing 10; and a clamping mechanism 50 with a threaded member 70 that clamps longitudinal member 40, spacer 120, and housing 10 to prevent relative movement of fastener 110 relative to housing 10 (Figure 4, Figure 5, col. 2, lines 66-67, col. 3, lines 1-43 and col. 4, lines 1-13).

Response to Arguments

Applicant's arguments filed in Paper No. 8 have been fully considered but are not persuasive with respect to claims 1 and 8-15.

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Contrary to Applicant's arguments in Paper No. 8, under "REMARKS", on Pages 15-20, with respect to claims 1 and 8-15, Horvath et al. disclose an upset or "member" 12 fixedly connected to a housing 10 and extending from the housing into engagement with a spacer 120 to maintain the spacer in frictional engagement with a fastener 110 to prevent relative movement between the fastener 110 and housing 10 when a longitudinal member 40 is disengaged from spacer 120 and the spacer 120 engages fastener 110; the fastener 110 and housing 10 being manually movable relative to each other in opposition to the frictional engagement when the longitudinal member 40 is disengaged from the spacer 120 (Figure 4, Figure 5, col. 2, lines 66-67, col. 3, lines 1-43 and col. 4, lines 1-13).

Allowable Subject Matter

Claims 3 and 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5 and 16-30 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:30 am and 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

AR *Anuradha Ramana*
October 4, 2003


EDUARDO C. ROBERT
PRIMARY EXAMINER